

2023:PHHC:122298

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP-11969-2015
Date of Decision: 12.07.2023**

Jai Parkash

..... Petitioner

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar and
others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Ms. Geeta Rani, Advocate for
Mr. Pawan Kumar Hooda, Advocate
for the petitioner.

Mr. Praveen Chander Goyal, Addl. A.G., Haryana.

HARSH BUNGER J. (ORAL)

1. Petitioner (Jai Parkash) has filed the instant petition under Articles 226/227 of the Constitution of India seeking quashing of impugned award dated 11.09.2012 (Annexure P-1) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar, whereby the reference has been answered against the petitioner/workman. A further prayer has been made for directing the respondent/Management to take back the petitioner in service with continuity and full back wages from the date of his termination.

2. Briefly, the petitioner was appointed as Driver on 19.08.1996 by the Haryana Roadways, Bhiwani, Depot Bhiwani for a period of one

month, i.e. with effect from 19.08.1996 to 18.09.1996, on payment of salary at the rate of Rs.1,800/- per month, regarding which, an agreement (Exb. D-1) is stated to have been executed and after expiry of the said period of one month, petitioner claims to have continued to serve the respondent/Department. It appears that on 30.09.2001, while the petitioner was on duty as driver on Bus bearing registration No.HR-39-4600, which was en route from Delhi to Bhiwani, on the way he collided the bus with a Maruti Car bearing registration No.HR-16-C-0621 and all the three persons travelling in the said car sustained injuries and one of them, succumbed to his injuries. With regard to the said accident, case bearing FIR No.375 dated 30.09.2001 (Exb. D-3) was registered under Sections 279, 337, 338 and 304-A of the Indian Penal Code, at Police Station Sadar Bahadurgarh. The Works Manager, Haryana Roadways, Bhiwani was deputed by respondent No.3 herein to go to the place of accident and investigate the matter, whereupon it was found that petitioner was at fault for causing the accident and in this regard, report (Exb. D-4) was submitted. On the basis of said enquiry report, show cause notice dated 12.11.2001 (Exb. D-5) was served upon the petitioner to show cause as to why his contract of service be not terminated. The petitioner is stated to have filed a reply to the said show cause notice, which was found unsatisfactory and he was called for personal hearing by respondent No.3, however, the explanation of petitioner was also not found satisfactory by the appointing authority and subsequently, contract of service of the petitioner was terminated vide order dated 17.01.2001 (Exb. D-6). Thereafter, the petitioner is stated to have filed an appeal against the said order dated 17.01.2001, however, the same was also dismissed by the Transport Commissioner, Haryana vide letter dated 29.10.2003. It appears that the petitioner was acquitted in the criminal case registered against him

regarding the accident in question vide judgment dated 06.06.2008 (Exb. W-1) passed by the Judicial Magistrate Ist Class, Bahadurgarh and after his acquittal, petitioner served legal notice upon the respondent-Department, seeking reinstatement in service. Thereafter, the petitioner is stated to have raised the Industrial Dispute vide Demand Notice dated 17.10.2008, however when the conciliation failed, matter was referred to the Industrial Tribunal-cum-Labour Court, Hisar by the appropriate Government for adjudication of dispute.

3. On the other hand, respondent-Department sought dismissal of the claim of petitioner on the ground that appointment of the petitioner was on contract basis and since on enquiry, he was found guilty of driving the bus in a rash and negligent manner, accordingly his contract of service was legally terminated.

4. From the pleadings of the parties, following issues were framed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar:-

“(i) Whether the termination of services of workman is legal or not? If not, to what relief he is entitled to? OPA

(ii) Whether the claim statement is not maintainable in the present form? OPM

(iii) Relief”

5. Thereafter, both the parties led evidence in support of their case. The petitioner examined himself in his evidence as WW-1 and on the other hand, respondent-Department examined one Balbir Singh, Clerk, from the Office of respondent-Department, as MW-1.

6. After considering the respective stands of the parties and also the evidence available on record, the Tribunal decided the reference against the petitioner vide award dated 11.09.2012 (Annexure P-1). Accordingly, petitioner filed the instant writ petition before this Court.

7. Learned counsel for the petitioner submits that petitioner worked with the respondent/Department for more than five years though he was appointed on contract basis but the appointment was made after complying with all the formalities like a recruitment of regular employee and during this period of five years, no complaint or enquiry or any other adverse remarks were made against the petitioner. It is submitted that had the intention of respondent/Department been to recruit the petitioner purely on contract basis then the petitioner should have been discharged after expiry of his actual contractual period of one month, however, the same was not done. It is contended that neither the proper procedure for terminating the employee from services was followed in the instant case nor petitioner was joined in the enquiry. Learned counsel for the petitioner submits that the Tribunal has erred in answering the reference against the petitioner vide award dated 11.09.2012 (Annexure P-1) by holding that his claim was barred by the limitation. It is submitted that the petitioner was acquitted in the criminal case on 06.06.2008 and he served demand notice dated 17.10.2008, thus there was no delay in raising the industrial dispute. Learned counsel for the petitioner contends that the petitioner was entitled to protection of Section 25-F of the 1947 Act as he had completed more than 240 days in one calendar year. Accordingly, it is prayed that the impugned award dated 11.09.2012 (Annexure P-1) be set aside and necessary direction be issued to the respondent-Department to reinstate the petitioner with continuity in service and full back wages along with all the consequential benefits.

8. Per contra, learned State counsel has opposed the prayer made in the instant petition by submitting that the petitioner was initially appointed on contract basis and he was never treated as a regular employee.

It is submitted that claim of petitioner was rejected on the ground of limitation and the termination of petitioner's contract of service by the respondent-Department was upheld and there is no illegality or perversity in the impugned award dated 11.09.2012 (Annexure P-1). It is the stand of respondent-Department that petitioner was appointed as a Driver on 19.08.1996 for a period of one month, i.e. with effect from 19.08.1996 to 18.09.1996, on payment of salary of Rs.1,800/- per month and after the expiry of said period of one month, the contract was extended from 19.08.1996 to 30.11.1996, 01.12.1996 to 27.02.1997, 28.07.1997 to 27.05.1997, 28.05.1997 to 24.08.1997, 24.08.1997 to 20.11.1997, 10.02.1999 to 09.05.1999, 10.05.1999 to 06.08.1999 (with salary of Rs.2,076/- per month), 07.08.1999 to 03.11.1999, 04.11.1999 to 31.01.2000, 01.02.2000 to 29.04.2000, 30.04.2000 to 27.04.2000, 28.07.2000 to 21.10.2000. It is contended on behalf of the respondent/Department that till the date of termination of his contract, the petitioner worked on contractual basis only and he was never served as a regular employee. It is submitted that when the accident occurred between the bus (which was driven by the petitioner) and a Maruti Car then a case bearing FIR No.375 dated 30.09.2001 was registered at Police Station Sadar Bahadurgarh, whereupon the Works Manager, Haryana Roadways, Bhiwani was deputed to investigate the matter and the petitioner was found at fault for causing the accident, regarding which, a report was also submitted and thereafter the Show Cause Notice was issued to petitioner, however, reply of the petitioner was found unsatisfactory. Thereafter, the petitioner was called for personal hearing by the Appointing Authority and vide order dated 17.01.2001, the contract of service of the petitioner was terminated. The appeal filed by the petitioner against the aforesaid order was also dismissed by the Transport

Commissioner, Haryana vide letter dated 29.10.2003, accordingly it is contended that the contract of service of the petitioner was rightly terminated after following the due procedure and there is no illegality or perversity in the same. It is submitted on behalf of the respondent/Department that after 2003, the petitioner did not take any action regarding termination of his contract of service and it is only in 2008 that he served a demand notice regarding the termination of his contract of service, which has rightly been dismissed by the Tribunal on the ground of limitation vide award dated 11.09.2012 (Annexure P-1). Accordingly, it is prayed that the instant petition be dismissed.

9. I have heard learned counsel for the parties and perused the paper book with their able assistance.

10. The Industrial Tribunal-cum-Labour Court, Hisar, vide its award dated 11.09.2012 (Annexure P-1), rejected the claim of petitioner by holding as under:-

“17. But, I am the view that the petitioner is not entitled to any relief, his claim being barred by limitation. The contract of the service of the petitioner was not terminated on the ground that a criminal case had been registered against him for causing the accident while driving the bus rashly and negligently on which he was on route as driver. Had it been so, then, of course, the cause of action to raise an industrial dispute regarding termination of the contract of his service would have arisen to the petitioner after his acquittal in said case and in that eventuality the case of the petitioner would have been within limitation as he was acquitted on 06.06.2008 and the demand notice was filed by him on 07.10.2008. But his services were terminated on the basis of a preliminary enquiry conducted at the spot by Works Manager on the direction of respondent no. 2. Therefore, cause of action to the petitioner had accrued for the first time to raise an industrial dispute

regarding termination of the service when his contract of service was terminated on 17.01.2002 by respondent no. 2 and for the second time on 29.10.2003 when his appeal was not entertained by the Transport Commissioner on the ground of maintainability. Since the demand notice was filed by the petitioner on 17.10.2008 i.e. after five years of the date when cause of action accrued the petitioner for the second time, it makes his claim barred by limitation. Although, there is no limitation prescribed under the Act, but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the Government or the Court. Procedural laws estoppel, waiver and acquiescence and doctrine of acceptance sub silentio are applicable in the proceedings under the Industrial Disputes Act. It is so held by the Hon'ble Apex Court and by own Hon'ble High Court in Assistant Engineer, C.A.D. Kota vs. Dhan Kunwar AIR 2006 Supreme Court 2670, Chief Engineer, Ranjit Sagar Dam & Anr. Vs. Sham Lal AIR 2006 Supreme Court 2682. Nandungadi Bank Ltd. vs. K.P. Madhavankutty and others 2000 Labour Industrial Cases 703, General Manager, Punjab Roadways, Nawan Shehar and another vs. Sarsander Kumar and another, 1997 (2) Services Law Reporter 266, Sirhind Co-operative Marketing-cum-Processing Society Ltd. vs Presiding Officer, Labour Court and another, 1991 (2) Service Law Reporter 487, Balwant Singh vs. Labour Court Bhatinda and others, 1996 Labour Court, Bhatinda 45. In Dhan Kunwar's case there was delay of 8 years in seeking reference. It was held by their lordship that on the ground of delay no relief should be granted. In Sham Lal's case there was delay of 9 years in seeking reference. On said ground no relief was granted. Likewise in K.P. Madhavankutty's case the reference was made after lapse of 7 years. It was held to be bad on the ground of delay. In Nawan Shehar's case, delay of more than 5 years in raising demand about illegal termination of services was held to be abandonment of the claim on the part of employer by our Hon'ble High Court. In remaining two

cases delay of 7½ years and 5 years was held to be sufficient in declining the relief on the point of limitation. The issue is, therefore, decided against the applicant.”

11. A perusal of the above extracted finding recorded by the Industrial Tribunal-cum-Labour Court, Hisar would manifest that claim of the petitioner has been rejected on the ground of limitation. Concededly, the petitioner was appointed on contractual basis and there is no document on record to show that services of the petitioner were ever regularised. Further, the contract of service of the petitioner was terminated on 17.01.2002 and thereafter his appeal was not entertained by the Transport Commissioner, Haryana vide letter dated 29.10.2003. Concededly, the petitioner did not initiate any further action with regard to termination of his contract of service and it is only on 17.10.2008 that he served a demand notice, which was after five years from the date of accrual of cause of action. In fact, this Court in the case of **“General Manager, Punjab Roadways and another Vs. Surinder Kumar and another, 1997(2) Service Law Reporter 266** held that delay of more than five years in raising demand about illegal termination of services would be abandonment of the claim on the part of an employee.

12. In the case in hand, although at the relevant time, there was no limitation prescribed under the 1947 Act, which was introduced only in the year 2010 when Section 2-A *ibid* was amended, however, it is well settled that even where no period of limitation is to be prescribed, the litigant is required to approach the authorities within a reasonable time period.

13. Keeping in view the aforestated facts and circumstances, I am of the considered view that since the petitioner did not take any action for almost five years after his appeal was not entertained by the Transport Commissioner, Haryana vide letter dated 29.10.2003, accordingly the claim

raised by petitioner in October, 2008 would be barred by delay and laches and therefore, he is not entitled to any relief.

14. The present petition is accordingly dismissed.

15. All pending application(s), if any, shall also stand closed.

12.07.2023

Apurva

(HARSH BUNGER)

JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No